

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Joseph P. Schmitt, Pro se,)
Plaintiff,)
vs.)
Carter Thomas, et al.,)
Defendants)

C.A. No. 05-10571-RWZ

PLAINTIFF'S MOTION FOR RECONSIDERATION ON DENIAL
OF MOTION TO PROCEED IN FORMA PAUPERIS

Now come the pro se plaintiff, a **NON-PRISONER**, and moves to the Court to reconsider its' ruling denying plaintiff's motion to proceed in forma pauperis.

As grounds for said motion plaintiff states the following facts:

1. Plaintiff is not by letter of law a prisoner. He is a civil detainee being temporarily detained at the Treatment Center which is not a prison.

The United States District Court held in *KING vs. GREENBLAT* 53 F. Supp. 2d 117, 138 (D. Mass 1999). "As a matter of statutory interpretation, the PLRA does not extend to cover civilly committed residents at the Treatment Center. In the first place, the Treatment Center is not a facility to which coverage of the PLRA extends. The PLRA applies only to persons who are subject to incarceration, detention or admission to 'prisons' as defined by the statute. The PLRA defines 'prisoners' as any person subject to incarceration, detention, or admission to any facility who is accused of, convicted of

of, sentenced for or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." 18 U.S.C.A. § 3626 (3), "prison" is defined as "any federal, state, or local facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law." Id § 3626 (g) (5).

2. Plaintiff filed his action in February of 2005. The court did not take any action on this case until July of 2005. In this extended period of time the plaintiff has expended his reported funds buying clothing, footwear and food items which he supports himself with. The Treatment Center, or as the court claims, the Commonwealth of Massachusetts does not pay for the necessities of the plaintiff's life. He must buy his own cosmetics, toilet paper, clothes and footwear simply because he does not meet the Department of Correction's standard for indigency which is five dollars or less on the inmate's account for a period of ninety days. Plaintiff has an account balance of less than \$400.00 and he must purchase special order footwear at a cost to him, not provided by the Commonwealth whatsoever, of \$7.00 per pair. This alone brings the balance of the plaintiff's account below \$200.00. This balance is to be used for plaintiff's needs which the Commonwealth will not provide him with because he has more than \$5.00 on his account.

3. Even when plaintiff filed this action he was far below the poverty level of the Commonwealth, and he was without an income. This fact alone should be enough for the Court to grant his motion to proceed in forma pauperis.

4. This plaintiff does not have extensive legal experience and must depend on his commonsense. In doing so he believes this court must find him indigent and unable to pay the ordered \$250.00 filing fee. It is commonsense to this plaintiff that he fall far below the FEDERAL POVERTY LEVEL since he has only less than \$40.00 on his account and has absolutely no reliable or steady income.

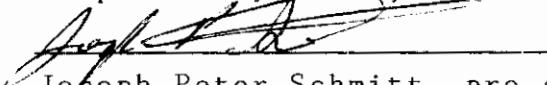
5. Plaintiff is attaching a printout from the Treatment Center that reflects the balance of his accounts. This printout will show that he does not have the means to pay the ordered amount(s) in order to have his action(s) prosecuted in this United States District Court.

6. The court will knowingly and willingly be denying the plaintiff's Constitutional Rights if it upholds its' original order denying plaintiff's motion to proceed in forma pauperis. It is an unnecessary burden upon this plaintiff to be forced to pay any filing fees when he has shown that he is incapable of paying such fees.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court vacate its original order and issue a new order allowing plaintiff's lawful motion to proceed in forma pauperis.

Dated July 27, 2005

Respectfully Filed,


Joseph Peter Schmitt, pro se
30 Administration Road
Bridgewater, Massachusetts
02324-3230

Cc: JPS

Attachments: 2 Page Printout Of Accounts Balances

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

Inmate Transaction Report

Date : 20050725 11:04

Commit# :	M81137	MASS. TREATMENT CENTER						Page : 1
Name :	SCHMITT, JOSEPH.,	Statement From 20050601						
Inst :	MASS. TREATMENT CENTER	To 20050725						
Block :	D2							
Cell/Bed :	020/B							
Transaction Date	Type	Receipt #	Check No	Inst Name	Notes	Income	Personal Expense	Savings Expense
	Total Transaction before this Period :						\$18,362.27	\$17,280.50
20050603 22:30	CN - Canteen	4711477		MTC	~Canteen Date 20050602	\$0.00	\$58.32	\$0.00
20050603 14:01	EX - External Disbursement	4714488	100149	MTC	~MYSTERY GUILD	\$0.00	\$8.60	\$0.00
20050603 14:01	MA - Maintenance and Administration	4714490		MTC	~Monthly Maintenance and Administration Fee	\$0.00	\$1.00	\$0.00
20050604 14:01	IC - Transfer from Inmate to Club A/c	4720687		MTC	~CERT 70041160000616733500-POSTAGE -Z11-POSTAGE -Z11	\$0.00	\$4.42	\$0.00
20050607 13:36	EX - External Disbursement	4726912	100566	MTC	~PARALYZED VETERANS OF AMERICA	\$0.00	\$15.00	\$0.00
20050608 13:41	IC - Transfer from Inmate to Club A/c	4733061		MTC	~POSTAGE -Z11-POSTAGE -Z11	\$0.00	\$3.69	\$0.00
20050609 16:39	IS - Interest	4754031		MTC		\$4.92	\$0.00	\$0.00
20050609 16:49	IS - Interest	4754032		MTC		\$0.00	\$0.00	\$0.00
20050609 22:30	CN - Canteen	4762575		MTC	~Canteen Date 20050609	\$0.00	\$59.85	\$0.00
20050610 11:13	EX - External Disbursement	4767121	100670	MTC	~HOT ROD	\$0.00	\$12.00	\$0.00
20050615 10:55	IC - Transfer from Inmate to Club A/c	4782801		MTC	~POSTAGE -Z11-POSTAGE -Z11	\$0.00	\$0.60	\$0.00
20050616 22:30	CN - Canteen	4798023		MTC	~Canteen Date 20050616	\$0.00	\$55.02	\$0.00
20050620 11:46	IC - Transfer from Inmate to Club A/c	4805483		MTC	~POSTAGE -Z11-POSTAGE -Z11	\$0.00	\$1.52	\$0.00
20050620 11:46	IC - Transfer from Inmate to Club A/c	4805490		MTC	~POSTAGE -Z11-POSTAGE -Z11	\$0.00	\$1.52	\$0.00
20050621 15:38	IC - Transfer from Club to Inmate A/c	4811586		MTC	~REFUND SHOWER SHOES-M81137 SCHMITT,JOSEPH PERSONAL-KCN WASH ACCOUNT -Z5	\$0.23	\$0.00	\$0.00
20050621 15:38	TI - Transfer from Institution	4811587		STH	~Associate Receipt Number is 4811586	\$0.00	\$0.23	\$0.00
20050621 15:38	TI - Transfer from Institution	4811588		MTC	~Associate Receipt Number is 4811586	\$0.23	\$0.00	\$0.00
20050623 22:30	CN - Canteen	4829156		MTC	~Canteen Date 20050623	\$0.00	\$59.85	\$0.00
20050630 13:57	IC - Transfer from Inmate to Club A/c	4860042		MTC	~CERT 7004116000061673 3241-POSTAGE -Z11-POSTAGE -Z11	\$0.00	\$9.90	\$0.00
20050630 13:58	IC - Transfer from Inmate to Club A/c	4860044		MTC	~CERT 7004116000061673 3234-POSTAGE -Z11-POSTAGE -Z11	\$0.00	\$9.90	\$0.00
20050630 22:30	CN - Canteen	4860826		MTC	~Canteen Date 20050630	\$0.00	\$59.15	\$0.00
20050706 14:07	IC - Transfer from Inmate to Club A/c	4884596		MTC	~POSTAGE -Z11-POSTAGE -Z11	\$0.00	\$0.83	\$0.00
20050707 22:30	CN - Canteen	4899387		MTC	~Canteen Date 20050707	\$0.00	\$50.01	\$0.00
20050711 14:49	IC - Transfer from Inmate to Club A/c	4909839		MTC	~POSTAGE -Z11-POSTAGE -Z11	\$0.00	\$3.85	\$0.00
20050712 13:01	EX - External Disbursement	4915241	101315	MTC	~DELTA PUBLISHING	\$0.00	\$44.80	\$0.00
20050712 13:01	MA - Maintenance and Administration	4915243		MTC	~Monthly Maintenance and Administration Fee	\$0.00	\$1.00	\$0.00
20050713 10:51	IS - Interest	4925296		MTC		\$3.36	\$0.00	\$0.00

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION

Inmate Transaction Report

Date : 20050725 11:04

Commit# : M81137 MASS. TREATMENT CENTER page : 2

Name : SCHMITT, JOSEPH, Statement From : 20050601

Inst : MASS. TREATMENT CENTER To : 20050725

Block : D2

Cell/Bed : 020 /B

Transaction Date	Type	Receipt #	Check No	Inst Name	Notes	Income	Personal Expense	In	Savings Expense
20050713 16:51	IS - Interest	4929297		MTC		\$0.00	\$0.00	\$	\$0.00
20050714 22:30	CN - Canteen	4951258		MTC	-Canteen Date : 20050714	\$0.00	\$59.80	\$	\$0.00
20050721 22:30	CN - Canteen	4983671		MTC	-Canteen Date : 20050721	\$0.00	\$56.75	\$	\$0.00
20050722 10:13	IC - Transfer from Inmate to Club A/c	4986242		MTC	-SPECIAL ORDER SNEAKERS-KCN WASH ACCOUNT - Z5-KCN WASH ACCOUNT - Z5	\$0.00	\$107.99	\$	\$0.00
20050722 10:54	EX - External Disbursement	4986536	101600	MTC	-PARALYZED VETERANS OF AMERICA	\$0.00	\$15.00	\$	\$0.00
						\$8.74	\$790.60	\$	\$0.00

Personal Savings
Balance as of ending date : \$389.91

Current Balances :

Personal	Savings	Freeze	Loan	Restitution	Sentence
\$389.91	\$1.12	\$0.00	\$0.00	\$0.00	\$0.00